

REMARKS

Claims 1-16 are pending and at issue in this application. Of these, claim 1 is independent. Applicants respectfully request reconsideration and favorable action in this case.

Applicants respectfully traverse the rejection of claims 1-16 as anticipated by U.S. Patent No. 5,478,990 to Montanari et. al. ("Montanari").

Each of the pending claims recites, *inter alia*, a method for harvesting portions of an animal carcass using a first and a second support means for transporting different portions of the animal, inspecting the second portion, correlating a first support means with a second support means such that the first portion and the second portion are positively identified as originating from the animal carcass, and harvesting a first portion unless its correlated second portion fails inspection.

While Montanari discloses a method for tracking food products throughout a production process by tagging animal parts with tracking numbers, Montanari does not disclose correlating a first support means with a second support means such that the first portion and the second portion are positively identified as originating from the animal carcass, and harvesting a first portion if its correlated second portion passes inspection. Instead, Montanari uses tags that are physically applied to the meat products and used to identify the origin of various meat products. The pending claims of the present application, on the other hand, recite correlating the support means for transporting portions of an animal in a process and harvesting associated choice portions during a production process. Montanari does not disclose correlating animal portions via their support means for harvesting associated choice portions, and thus, Montanari cannot anticipate any of the pending claims.

Furthermore, although not asserted in the Office action, Montanari cannot render any of the pending claims obvious because Montanari does not, in any manner, recognize the need to correlate different portions of an animal via their corresponding support means for the purpose of selecting choice portions and discarding failed inspection portions during a production process. Instead, Montanari teaches a method used for tracking food products in order to enable verification of product origin and production history. Montanari is primarily concerned with providing an investigation and analysis tool for determining the origin of food products, not with determining correlated portions of an animal on a production line for the purposes of selecting associated choice portions or eliminating associated failed inspection portions during a process.

It is clear that the prior art must make a suggestion of or provide an incentive for a claimed combination of elements to establish a prima facie case of obviousness. See, *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985). This principle holds true even if the applied art could be modified to produce the invention recited by the pending claims. See, *In re Mills*, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990); *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984) ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") Because Montanari does not disclose or even suggest the desirability of correlating different portions of an animal via their support means for the purpose of selecting choice portions and discarding failed inspection portions during a production process, Montanari cannot render obvious any of claims 1-16.

Notwithstanding the failure of Montanari to disclose all the elements of independent claim 1, as discussed above, Applicants respectfully traverse the rejection of dependent claims 2-16 as anticipated by Montanari for at least the following reasons:

Dependent claims 2-4 require that the first and second portions of the carcass are transported toward the harvesting points on separate processing lines. While Figure 4 of Montanari may teach separation of various offal items from the remainder of an animal carcass, it is clearly stated that such items are labeled with a tracking number. Accordingly, while Montanari may teach separation of various items from the carcass, it does not teach or suggest that such items are transported on separate processing lines, with the support means on the separate processing lines being correlated to one another.

Claims 5-7 require that the first portion of the carcass is supported by the same support means which transported the carcass to the separation point. This element is not disclosed by Montanari.

Claim 8 recites removing the second portion from the second processing line between the inspection point and the second harvesting point, if the second portion does not meet the predetermined standard. Montanari does not, in any manner, teach or suggest this feature.

Claim 9 further recites that detecting means are used to detect the presence of the second portion between the inspection point and the harvesting point, where failure to detect the second portion indicates that the second portion does not meet the predetermined standard. While Montanari may provide a series of detection points throughout the processing line, there is no teaching or suggestion in Montanari that the fitness of the product is determined by whether or not it is detected on the processing line.

Claim 10 recites that a failure to detect the second portion causes a signal to be sent to the first harvesting point, resulting in the first portion of the carcass not being harvested.

Montanari does not, in any manner, teach or suggest this system.

Claim 12 provides a safety feature in that the first portion of the carcass will not be harvested if it cannot be positively matched to the second portion of the carcass. This safety feature is not disclosed by Montanari, even though the method disclosed by Montanari is subject to error due to misapplication of labels.

Claims 13, 14, and 16 recite the method of claim 1 as applied to chicken carcasses. Applicants contend that the system of Montanari cannot be applied to chicken carcasses, because the method of Montanari would impair a poultry production line such that the line would become impractically slow. Clearly, the system of Montanari, in which labels must be read, generated, and applied during processing of the carcass can only work where line speeds are slow enough to permit such operations. Moreover, the Montanari system is best used in processing large carcasses, such as cattle, where labels can be quickly affixed to large parts. In a typical poultry processing plant there are smaller animal parts and much faster line speeds, such that the generation and manual application of tags or labels to the various chicken parts would make the production line impractically slow, to the point of being unusable. Thus, Montanari does not teach or suggest the recited elements of claims 13, 14, or 16.

Claim 15 specifies that the predetermined standard applied to the second portion of the carcass is a standard of quality. The failure of the second portion of the carcass to meet this standard will result in the rejection of both the first and second portions. However, it is to be noted that the first portion may also be rejected if one or more other predetermined conditions do not exist. As mentioned above in reference to claim 12, one of these

predetermined conditions comprises an inability to positively match the first and second portions of the carcass. Montanari does not teach or suggest that one of the portions of the carcass may be rejected for failure to meet a specific quality standard, while another portion of the carcass may be rejected for additional reasons.

CONCLUSION

Applicants submit that this case is in a condition for immediate allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request reconsideration and allowance of rejected claims 1-16.

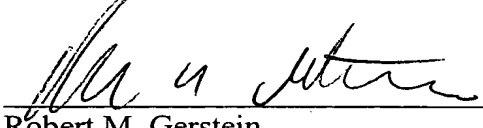
Although Applicants believe that no other fees are due, the Commissioner is hereby authorized to charge any fees or to credit any overpayments to Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP. In addition, if a petition for an extension of time under 37 CFR 1.136(a) is necessary to maintain the pendency of this case and is not otherwise requested in this case, Applicants request that the Commissioner consider this paper to be a request for an appropriate extension of time and hereby authorize the Commissioner to charge the fee as set forth in 37 CFR 1.17(a) corresponding to the needed extension of time to Deposit Account No. No. 13-2855 of Marshall, Gerstein & Borun LLP.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call its attorney at the number listed below.

Respectfully submitted,

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